IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1050 OF 2006
IN
CRIMINAL APPEAL NO.661 OF 2005

Babubhai @ Zaverchand Harjivansheth..Applicant
Versus
The State of Maharashtra ..Respondent

Mr.R.R.Salvi for the applicant.

Ms.P.H.Kantharia APP for the State.

Coram : J.N.Patel &
R.S.Mohite,JJ

Date : 11.01.2007.

PC

1. Heard the learned Advocate for the applicant and the learned APP for the State.

2. This is an application for suspension of sentence, filed by the applicant original accused no.1. The applicant alongwith others came to be prosecuted for having committed offence under various provisions of Scheduled caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 alongwith offences under Sections 120-B, 302, 201 & 364 r/w 34 of IPC as the victims in the case were members belonging to the Scheduled Caste.

3. It was the case of the prosecution that the deceased Mr.and Mrs. Kamble entered into an agreement with accused no.2 under which accused nos.1 & 2 agreed to finance a project of the deceased in order to enable them to run the business of domestic gas agency. It is the prosecution case that relations between the victims and accused no.1 became strained arising out of the business arrangement they had under the said agreement as the applicant wanted to bye-up business from the victims. It is the case of the prosecution that as Mr.& Mrs.Kamble did not succumb to the demands of applicant no.1, accused nos.1 to 3 hatched conapiracy alongwith accused no.4 to eliminate them. This was also supported by a report lodged by Mr.& Mrs.Kamble to the police that they apprehend risk to their lives at the hands of accused nos.1 to 3.

4. On the day of the incident accused nos.1 to 4 invited Mr.& Mrs.Kamble to inaugurate a dealership of Hindustan Lever Ltd., at Ambet, which was a trap and that is how the appellant accused alongwith others was successfully eliminating them. They not only murdered the couple but also burnt their bodies to destroy evidence. The trial Court found

them guilty on all counts and by the judgment and order dated 9.6.2005 convicted on various counts particularly the applicant accused no.1 has been convicted for having committed offence under Sections 120-B, 364, 302 and 201 r/w Section 34 of IPC alongwith other accused persons.

5. The learned Advocate for the applicant submitted that the prosecution case merely rests on the evidence of the sole witness i.e.Keshav Lahu Hate (PW 33) and his evidence suffers from various contradictions and omissions in addition to the fact that his statement came to be recorded with the sole object to implicate the applicant in the crime and if his evidence is read as a whole, it will be very unsafe to rely on such a witness on the basis of which trial Court found the applicant guilty for the aforesaid charges. Therefore, his case may be considered for suspension of sentence and for being released on bail.

6. The learned APP pointed out to this Court that there is overwhelming evidence to show complicity of the applicant who has been rightly convicted by the trial Court and therefore, pending appeal, he should not be released on bail.

7. We have examined the case of the applicant-Babubhai and find that there is evidence on record to show his complicity other than the oral evidence of PW-33 Hate. We do not find it will be proper in the facts and circumstances of the case to consider his case for suspension of the sentence. As such, application is rejected.

(J.N.Patel,J)

(R.S.Mohite,J)